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**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Special Permit

***315 Chestnut Street Needham, LLC, owner
315 Chestnut Street
Map 46, Parcel 51***

April 24, 2024

315 Chestnut Street Needham, LLC, applicant, applied to the Board of Appeals for a Special Permit under Sections 3.2.2, 5.1.1.5, 5.1.2., 5.1.3 and any other applicable sections of the Zoning By-Law (By-Law) to permit the conversion and use of the second floor space, most recently used as office space, for residential purposes as one residential dwelling unit and waiving strict adherence to the number of required parking and the parking plan and design requirements. The property is located at 315 Chestnut Street, Needham, MA in the Chestnut Street Business (CSB) Zoning District. A public hearing was held in the Select Board Chamber, Needham Town Hall, 1471 Highland Avenue, on Wednesday, April 24, 2024 at 7:30 p.m. and livestreamed on Zoom.

Documents of Record:

- Application for Hearing, Clerk stamped March 18, 2024.
- Cover Letter prepared by George Giunta, Jr., attorney, dated March 18, 2024.
- Memorandum in Support prepared by George Giunta, Jr., attorney, dated March 18, 2024
- Plan of Land, prepared by William J. Dorgan, Land Surveyor, stamped and dated February 27, 2024.
- Letter from Lee Newman, Director of Planning and Community Development, dated April 2, 2024.
- Email from Joseph Prondak, Building Commissioner, dated March 28, 2024.
- Email from Thomas A. Ryder, Assistant Town Engineer, dated April 2, 2024.
- Email from Chief Tom Conroy, Fire Department, dated April 2, 2024.
- Email from Chief John Schlittler, Police Department, dated March 21, 2024.
- Email from Tara Gurge, Assistant Public Health Director, April 1, 2024.
- *315-317 Chestnut Street – Special Permit – 8-30-1988*
- *315-317 Chestnut Street – Special Permit – 9-1-1992*
- *315-317 Chestnut Street – Special Permit Amendment – 11-21-1996*

October 19, 2023

The Board included Jonathan D. Tamkin, Chair, Howard S. Goldman, Vice Chair, and Valentina Elzon, Associate Member. Mr. Tamkin opened the hearing at 7:30 p.m. by reading the public notice.

George Giunta, Jr., attorney representing the applicant, reported that the applicant seeks to convert the existing vacant second floor commercial space to a residential apartment. The three-unit commercial rental property is located on a corner lot on Chestnut and Marsh Streets. The first floor is occupied by Kostas Pizza and Seafood, and a new Coin and Jewelry store in the space formerly occupied by a dry cleaner. The vacant second story has been occupied by a variety of businesses including an architectural firm, a hairdresser and Cini Engineering.

Mr. Giunta reported that the upstairs 1,552 square feet unit is being redesigned to contain a three bedroom, 2 bath residential unit. The main entrance will be located on Chestnut Street with an exterior emergency/fire escape exit in the back. An apartment on the second floor is allowed in the CSB Zoning District with the granting of a Special Permit by the Board under Section 3.2.2 of the By-Law.

The applicant also seeks to waive strict adherence to By-Law's parking and parking design requirements. Mr. Giunta reported that the property's current parking has had the same plan since the 1950. There are eight spaces – two parallel spaces along the rear fence and six along the southern side of the building. Prior to 1995, 315 and 329 Chestnut Street, the adjacent building, were owned by one owner, L. Petrini and Sons, having a shared parking lot with 17 spaces. In 1995 Petrini sold the buildings separately thereby terminating the shared parking with 315 Chestnut Street having eight spaces; and 329 Chestnut Street having nine spaces with a shared driveway on Chestnut Street for both properties.

Mr. Giunta reported that there were three Special Permits associated with Kostas Pizza and Seafood. *315-317 Chestnut Street – Special Permit – August 30, 1988* dealing with a take-out and home delivery with no sit-in services; *315 Chestnut Street – Special Permit Amendment – September 1, 1992*, to modify the Decision of 1988 to allow seating for 15-persons in addition to take out and delivery and having access to five parking spaces to the rear of Village Square Mall across the street; and *315 Chestnut Street – Special Permit Amendment – November 21, 1996* where the Board recognized that the properties had been sold and that the seller had granted the purchaser of the subject property the use of five parking space to the rear of the seller's property at Village Square across the street for use as Kostas' employee parking.

Mr. Tamkin inquired if there was dedicated parking for the business tenants. Mr. Giunta responded that the parking is available on a first come first served basis and is currently used primarily by Kostas as the new Coin and Jewelry store has not yet opened and the top floor is vacant. There is no intent by the owner to dedicate the spaces to a tenant.

Mr. Goldman asked if the five spaces across the street at the Village Square were still in use. Mr. Giunta confirmed that the five spaces were still able to be used for Kosta's per the Decision in 1996. Based on Mr. Giunta's observation the two parallel spaces in the back appear to be used

by Kosta employees and that at most three of the parking spaces on the side of the building are used. He does not expect the Coin and Jewelry business will have much demand on the parking spaces.

Mr. Tamkin was concerned that the residential unit with three bedrooms could have a demand of three parking spaces. Mr. Giunta responded that there are no reserved dedicated parking spaces for any of the tenants. Mr. Giunta noted that the residential use would have a less intensive demand for parking than the office use. The office space has a calculated demand of four spaces higher than the residential use of two. Furthermore, Mr. Giunta reasoned that because the property's proximity to the hospital and public transportation, the residential tenant may not have a car. Based on Section 5.1.4 of the By-Law the parking calculation for the unit is one and a half spaces (two spaces rounded up) per dwelling unit. Mr. Giunta believed it indicated a possible need of zero to three parking spaces.

Mr. Tamkin asked if two parking spaces could be dedicated for the unit. Mr. Giunta thought the back two spaces could be dedicated leaving the six side spaces for customers of the downstairs units and having the Kosta employees park at the Village Square.

Mr. Goldman did not think it made sense to dedicate the spaces or micro manage the parking based on the current success of the parking use. Mr. Tamkin thought that residential use was different requiring parking a car when the resident is home. In addition, he noted that the current parking requirements were not being adhered by the Kosta employees who are parking on-site instead of at the Village Mall. Mr. Goldman thought the market would determine the use and based on the By-Law the residential use had a lower parking demand than office use. .

Mr. Giunta reported that the parking design does not meet the design requirements of the By-Law. The back spaces do not meet the setback requirement as they are on the property line instead of four feet away from the property line; and are shorter than the 22 feet required. The spaces along the side of the building are not setback 20 feet from Chestnut Street. In addition, the parking does not comply with the landscaping or tree requirements. The parking and building have been in existence for many years and there are no plans to change the parking or the exterior of the building. All changes to the second floor will be interior namely retrofitting the space to add separation to the rooms.

Mr. Giunta reported the number of parking spaces is currently less than required under the By-Law. Based on the current parking demand for use is 25 spaces calculated as follows:

- Kostas Pizza and Seafood: 15 seats (five spaces) and one take-out station (ten spaces) requires 15 total parking spaces.
- Coin and Jewelry: One space per 300 square feet (1,200 square feet) requires four spaces.
- Second Floor Office: One space per 300 square feet (1,552 square feet) requires six spaces.

The proposed parking demand for use is **21 spaces** calculated as follows:

- Kostas Pizza and Seafood: 15 seats (five spaces) and one take-out station (ten spaces) requires **15 total parking spaces**.
- Coins and Jewelry: One space per 300 square feet (1,200 square feet) requires **four**

spaces.

- Second Floor Residential: One and a half space per unit requires **two spaces**.

In addition, there are between four to five one-hour on-street parking spaces available on March Road.

A parking waiver from the number of required spaces is still required but the waiver now is for 13 spaces a reduction of four spaces. Mr. Giunta believed this reduction in parking demand from an office use to a residential one is a realistic one as the prior second floor tenant, an architectural firm, had six employees.

Mr. Tamkin asked if there were any proposed changes to deal with the restaurant fumes from the restaurant on the residential use. Mr. Giunta responded that there were no plans. Kostas has a griddle, deep fryer and a pizza oven which produces not a substantial odor or fumes. The restaurant complies with the Health Department requirements. The residential unit will be outfitted with a sprinkler system.

Comments received:

- The Police Department had no issue.
- The Planning Board had no comment.
- The Engineering Department had no comment or objection.
- The Building Department had no issues or concerns. It was noted that no specific parking requirement exists for a single apartment in the CSB Zoning District and the Building Commissioner identified that the applicable parking requirement was for Multi-Family Structures under Section 5.1.4 of the By-Law.
- The Fire Department had no issues.
- The Health Department noted that the applicant must apply for a Demolition Review online with supplemental report documentation along with asbestos sampling prior to the issuance of a Building Permit, and ongoing pest control must be conducted during extensive renovation and throughout construction.

Art Campbell, representative of the landlord, said that there are no dedicated parking spaces at the site but were open to dedicate up to two parking spaces for the residential use.

Mr. Tamkin asked if he knew if Kostas was still leasing spaces from the Village Mall across the street. Mr. Campbell did not know.

Mr. Goldman was in support of the application and parking noting there was no opposition to the proposal. Mr. Goldman asked what the rationale for the change from office to residential use was. Mr. Giunta responded that the change is market driven. Currently there is a tremendous demand for rental housing in Needham, especially with the change from rental to ownership.

Mr. Goldman asked if there was concern that Beth Israel Deaconess-Needham (BID) might become the tenant to use for short term stays. Mr. Giunta said that BID was a local hospital and most patients are from the area not requiring short term accommodations for their family

Ms. Elzon inquired if there was any concern about a tenant parking their car long term without moving it. Mr. Giunta said the back spaces could accommodate that kind of parking.

Mr. Tamkin asked if it made sense to have the landlord have a lease that delineates the parking use. Mr. Giunta was not interested in setting parking limitations in the tenancy agreement as it would limit the flexibility of the parking spaces for other users.

Mr. Tamkin inquired if there was an interest in limiting the duration of the rental to restrict it from transient housing. Mr. Giunta hesitated in imposing a restriction that has not been identified or imposed by the Town.

Mr. Goldman felt that any issue that would arise at the small size of the property (three units) could be managed from a tenant/landlord perspective. He was uncomfortable regulating something that could be moderated by the landlord. Ms. Elzon concurred.

Mr. Tamkin asked if there should be a restriction that requires five spaces off-site for Kostas' employees as it appears they are not complying to the agreement of a prior Decision. Mr. Giunta noted that a condition of a prior Decision states "failure to comply the Board shall have the right to revoke" the Decision. Mr. Giunta argued that the reality is that there is sufficient parking as indicated by the absence of parking complaints at the site.

Mr. Goldman has no concern with the change of use or the parking waivers as there appears there is sufficient parking and no complaints.

Mr. Tamkin asked if there was an interest in dedicating parking for the residential use as amenable by the landlord's representative. Ms. Elzon concurred with Mr. Goldman and did not want to restrict and dedicate tenant parking. She felt it was up to the tenants to negotiate the terms. Mr. Giunta agreed and could foresee a situation where there is a residential tenant without a car making the parking restriction unnecessary, or if they needed a space beyond what is available, they can bring it to the landlord for resolution.

Mr. Tamkin asked if the Board wished to have all the parking in common but to allow the landlord to dedicate up to two spaces at their discretion for residential use if needed.

Mr. Campbell added that there is a likelihood that the residential tenants work off-site and to restrict the parking during the day may be a burden for the commercial tenants. However, he was comfortable with the residential restriction option discussed.

Ms. Elzon moved to grant a Special Permit under Sections 3.2.2, 5.1.1.5, 5.1.2, 5.1.3, and 5.1.4 of the By-Law to permit the conversion of the second floor space from office use to residential use and waive the strict adherence of the parking number and parking plan and design requirements per the plans submitted; and that all parking spaces are in common for all uses and all tenants and that the landlord shall have the right to dedicate and lease two parking spaces located in the rear of the building to residential tenants. Mr. Goldman seconded the motion. The motion was unanimously approved.

The meeting adjourned at 8:13 p.m.

Findings:

On the basis of the evidence presented at the hearing, the Board makes the following findings:

1. The premises is a 7,500 square feet lot improved by a two-story commercial building with off-street parking in the Chestnut Street Business Zoning District. The building consists of three tenant spaces. The first floor of approximately 2,400 square feet is divided into two tenant spaces. The second floor of 1,552 square feet contains one tenant space.
2. The first floor is currently used and occupied by Kostas Pizza and Seafood, pursuant to multiple Decisions going back to 1988. The other first floor unit has been recently leased to a Coin and Jewelry store. The second-floor unit is currently vacant and has been occupied for office use, most recently by an architectural firm and prior to that by an engineering firm.
3. The applicant proposes to renovate and repurpose the entire second floor space to serve as a single residential unit. The new unit will consist of three bedrooms, two bathrooms, a kitchen with living, dining, and work areas. The unit will be accessible from the door and stairs on the first floor on Chestnut Street and there is an emergency egress/fire escape in the rear of the building. All renovations will be limited to the interior only.
4. The conversion of the office space to an apartment will provide badly needed rental housing which is accessible to public transportation, employment, shopping and community amenities. This proximity may attract a tenant with the option to be car free.
5. The property contains eight existing parking spaces on the premises – two parallel spaces along the fence at the rear of the property and six perpendicular angled spaces along the south side of the building. There is a common driveway easement along the perpendicular parking shared with 329 Chestnut Street.
6. The parking area has been in existence prior to the adoption of the parking design guidelines of 1980 and none of the parking spaces comply with the existing parking plan and design requirements of Section 5.1.3 of the By-Law. The design non-conformities include parking space size, parking setbacks, landscape areas and trees.
7. Based on the current By-Law the parking demand for the most recent commercial use at the building is 25 spaces (15 spaces for Kostas Pizza and Seafood; 4 spaces for the Coin and Jewelry Store; and 6 spaces for the second-floor office space). Based on the change from office to residential use of the second floor the total parking demand will decrease to 21 spaces calculated as follows:
 - Kostas Pizza and Seafood: 15 seats (five spaces) and one take-out station (ten spaces) requires **15 parking spaces** per Section 5.1.2 (9 of the By-Law);
 - Coins and Jewelry: One space per 300 square feet (1,200 square feet) requires **four**

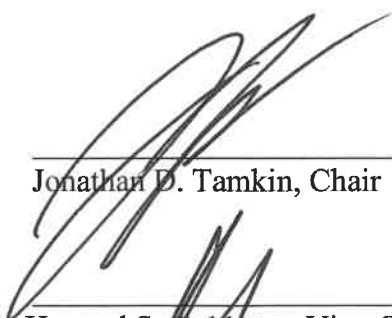
- spaces per Section 5.1.2 (6 of the By-Law;
 - Second Floor Residential: One and a half space per unit requires **two spaces** per Sections 5.1.2(21 and consistent with 5.1.4 of the By-Law.
8. There are three Board Decisions associated with the property: *315-317 Chestnut Street – Special Permit – August 30, 1988* to allow a pizza establishment for take-out service only; *315-317 Chestnut Street – Special Permit-September 1, 1992* to allow seating for 15 persons in addition to take out and to waive strict adherence to parking number. Five additional parking spaces made available at the strip shopping center across Chestnut Street; and *315-317 Chestnut Street – Special Permit Amendment-November 21, 1996* where the Board recognized that the properties had been sold and that the seller had granted the use of five parking space to the rear of the Village Square across the street for employee parking. Terms and conditions not modified remain in full force and effect.
 9. 21 spaces are required for the current commercial uses and the proposed residential use. There are eight spaces on-site resulting in a shortfall of 13 parking spaces. There are also five spaces behind the Village Square for the employees of Kotsas; and four to five limited time, on-street parking spaces along the property on Marsh Road available for short term parking.
 10. There was no opposition or objections to the proposal from the public, or from the Building, Engineering, Fire, Police and Planning Board.
 11. Based on the evidence submitted to the Board during the hearing, the Board finds the conversion of the second-floor commercial space into a residential apartment located in the Chestnut Street Business (CSB) to comply with Section 3.2.2 of the By-Law and is compatible with the characteristics of the surrounding area. The issuance of a special permit is consistent with the criteria of Section 7.5.2 of the By-Law.
 12. The Board finds parking is adequate and that special circumstances exist to waive the required number of parking spaces.
 13. The applicant proposed no exterior changes to the existing structure or changes to the parking lot. It would not be possible to comply with design requirements without reductions in the number of spaces. The Board finds there are special circumstances that justify waiver of the By-Law's design requirements.

Decision:

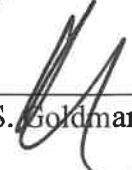
On the basis of the foregoing findings, following due and open deliberation, upon motion duly made and seconded, the Board by unanimous vote, grants the applicant a Special Permit under Sections 3.2.2, 5.1.1.5, 5.1.2, 5.1.3, and 5.1.4 of the By-Law to permit the conversion of the second floor space from office use to residential use and waive the strict adherence of the parking number and parking plan and design requirements per the plans submitted; provided

- that all parking spaces are in common for all uses and all tenants and that the landlord shall have the right to dedicate and lease two parking spaces located in the rear of the

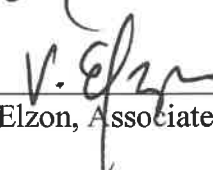
- building to residential tenants; and
- in all other respects, the other terms and conditions of prior decisions not modified shall remain in full force and effect.



Jonathan D. Tamkin, Chair



Howard S. Goldman, Vice-Chair



Valentina Elzon, Associate Member